

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JOSHUA BRODSKY,

Petitioner,

v.

WARDEN BACA, et al.,

Respondents.

Case No. 3:15-cv-00009-MMD-VPC

ORDER

Petitioner Joshua Brodsky has submitted a petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254 (dkt. no. 1-1). Petitioner's application to proceed *in forma pauperis* (dkt. no. 1) is granted. As discussed below, the petition must be dismissed for failure to state claims cognizable in federal habeas proceedings.

As a preliminary matter, on the face of his petition, petitioner indicates that his state judgment of conviction was entered on March 24, 2014, and that he did not file a direct appeal or a state postconviction habeas petition. Thus, it appears that petitioner has failed to exhaust state remedies.¹

Moreover, in count one, petitioner states that his due process rights were violated because there was no proof of force and, without such proof, he should have been convicted of a misdemeanor only (dkt. no. 1-1, p. 3). However, petitioner pled guilty to

¹The Court recognizes that petitioner states, without elaboration, that he did not pursue a direct appeal or state postconviction habeas relief for a "medical reason." Whether petitioner may have an argument as to why he should be relieved of the exhaustion requirement is of no moment here, however, because petitioner sets forth no grounds that would be federally cognizable in any event.

1 coercion. (*Id.* at 2.) “[W]hen a criminal defendant has solemnly admitted in open court
 2 that he is, in fact, guilty of the offense with which he is charged, he may not thereafter
 3 raise independent claims relating to the deprivation of constitutional rights that occurred
 4 prior to the entry of the plea.” *Tollett v. Henderson*, 411 U.S. 258, 267 (1973); *United*
 5 *States v. Floyd*, 108 F.3d 202, 204 (9th Cir.1997) (overruled on other grounds in *U.S. v.*
 6 *Castillo*, 496 F.3d 947 (9th Cir.2007)). When a petitioner pled guilty, under *Tollett*, the
 7 only federally cognizable habeas claims he or she may raise are claims of ineffective
 8 assistance of counsel with respect to the advice to plead guilty or the voluntariness of
 9 that plea. *Tollett*, 411 U.S. at 267. Accordingly, ground one is not cognizable.

10 Of the remaining two grounds in the petition, the first alleges that petitioner was
 11 not placed in a permanent medical ward in contravention of the state sentencing judge’s
 12 order (dkt. no. 1-1, p. 5). This is not a habeas claim and, in fact, petitioner raised this
 13 claim in a 42 U.S.C. § 1983 civil rights action in this court, case no. 2:14-cv-01064-RFB-
 14 CWH. The last ground, also not a habeas claim, asserts that Clark County Detention
 15 Center (“CCDC”) personnel discriminated against petitioner in violation of the
 16 Americans with Disabilities Act (“ADA”) (dkt. no. 1-1, p. 7). Petitioner alleges that he is
 17 disabled, was unable to work at CCDC, and other inmates who worked there received
 18 up to ten days of work credit each month. Neither ground is cognizable in federal
 19 habeas proceedings.² *Bogovich v. Sandoval*, 189 F.3d 999, 1003-1004 (9th Cir. 1999);

20 ²The Court notes that petitioner indicates under “Other Proceedings” that his
 21 claims in civil rights case no. 2:14-cv-001064-RFB-CWH were denied and that the court
 22 “told me to go this way” (dkt. no. 1-1, p. 4). In the civil rights action he references, this
 23 court denied several motions seeking immediate release based on plaintiff’s (the
 24 petitioner in the instant habeas petition) medical conditions and stated that plaintiff could
 25 not use a § 1983 action to challenge the fact or duration of his confinement but must
 26 instead seek habeas relief (2:14-cv-001064-RFB-CWH, dkt. no. 24, p. 7). Petitioner
 27 appears to have thus brought his ADA claim in a habeas petition because in the petition
 28 he (1) alleges that he was discriminated against based on his disability and (2)
 proceeds to calculate what work credits he may have been awarded (allegedly, if he
 had not been discriminated against) and how that may have resulted in an earlier
 release in 2016 (dkt. no. 1-1, p. 7). However, the gravamen of his claim is that he was
 discriminated against because he cannot work, and simply making the leap to calculate
 a purely speculative number of days of work credit does not transform this ADA claim
 into a cognizable habeas claim. *Bogovich v. Sandoval*, 189 F.3d 999, 1003-1004 (9th
 Cir. 1999); *Heck v. Humphrey*, 512 U.S. 477, 481-83 (1994); see also *Harper v. Board*
of Prison Com’r, 2015 WL 268803 (D. Nev. January 20, 2015).

1 Heck v. Humphrey, 512 U.S. 477, 481-83 (1994); see also Harper v. Board of Prison
2 Com'r, 2015 WL 268803 (D. Nev. January 20, 2015).

3 As petitioner has set forth no federally cognizable grounds, the petition is
4 dismissed.

5 It is therefore ordered that petitioner's application to proceed *in forma pauperis*
6 (dkt. no. 1) is granted.

7 It is further ordered that the Clerk shall detach and file the petition (dkt. no. 1-1).

8 It is further ordered that the petition is dismissed with prejudice for failure to state
9 claims cognizable in federal habeas corpus.

10 It is further ordered that a certificate of appealability is denied, as jurists of reason
11 would not find the Court's dismissal of this petition to be debatable or incorrect.

12 It is further ordered that the Clerk shall enter judgment accordingly and close this
13 case.

14 DATED THIS 23rd day of April 2015.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE